

**ASSEMBLY BILL**

**No. 1435**

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**Introduced by Assembly Member Gatto**

January 6, 2014

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An act to amend Sections 17053.85 and 23685 of, and to add Sections 17053.65 and 23665 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1435, as introduced, Gatto. Taxation: credits: qualified film and digital media infrastructure projects: qualified motion pictures.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit against those taxes for taxable years beginning on or after January 1, 2011, in an amount equal to a specified percentage of either 20% or 25%, respectively, of the qualified expenditures, as defined, attributable to the production of a qualified motion picture in California, or, where the qualified motion picture has relocated to California or is an independent film, as provided. Existing law imposes specified duties on the California Film Commission related to the administration of the credits, including a requirement to allocate the tax credits until July 1, 2017, and limits the aggregate amount of credits that may be allocated to qualified motion pictures in any fiscal year to \$100,000,000, through the 2016–17 fiscal year.

This bill, under the Personal Income Tax Law and the Corporation Tax Law, would, among other things, remove the sunset provisions, thus extending the credit indefinitely, revise the limit on the aggregate amount of credits that may be allocated in a fiscal year to \$\_\_\_\_, revise how the credit amount is determined for specified qualified motion

pictures, provide that credit amount for television series shall be 20% of qualified expenditures, provide that the credit amounts may be increased based on specified criteria, and reserve up to \$\_\_\_\_\_ and \$\_\_\_\_\_ for television series and for specified productions that perform postproduction in the state.

This bill would also, under both laws for taxable years beginning on or after January 1, 2014, allow a credit against tax in an amount as provided in a written agreement between the California Film Commission and the taxpayer, not to exceed 5% of an investment made by the taxpayer in a qualified film and digital media infrastructure project, as defined, located in this state.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 17053.65 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17053.65. (a) (1) For taxable years beginning on or after
- 4 January 1, 2014, there shall be allowed as a credit against the “net
- 5 tax,” as defined in Section 17039, an amount as determined by the
- 6 commission pursuant to paragraph (2).
- 7 (2) The credit under this section shall be allocated by the
- 8 commission with respect to the 2014–15 fiscal year and each fiscal
- 9 year thereafter. The amount of credit allocated to a taxpayer with
- 10 respect to a fiscal year pursuant to this section shall be as set forth
- 11 in a written agreement between the commission and the taxpayer
- 12 and shall not exceed 5 percent of an investment amount the
- 13 taxpayer has made in a qualified film and digital media
- 14 infrastructure project.
- 15 (b) For purposes of this section:
- 16 (1) “Commission” means the California Film Commission.
- 17 (2) (A) “Qualified film and digital media infrastructure project”
- 18 means a film, video, television, or digital media production and
- 19 postproduction facility located in this state, including any movable

1 and immovable property and equipment related to that facility and  
2 any other facility that is a necessary component of the primary  
3 facility, that has a minimum infrastructure budget of \_\_\_\_ dollars  
4 (\$\_\_\_\_).

5 (B) “Qualified film and digital media infrastructure project”  
6 does not include a movie theater or other commercial exhibition  
7 facility.

8 (c) For purposes of this section, the commission shall do the  
9 following:

10 (1) Negotiate with a taxpayer the terms and conditions of  
11 proposed written agreements that provide the credit allowed  
12 pursuant to this section to a taxpayer.

13 (2) Inform the Franchise Tax Board of the terms and conditions  
14 of the written agreement.

15 (3) Inform the Franchise Tax Board of any disallowance, in  
16 whole or in part, of a previously allocated credit upon approval of  
17 the disallowance by the committee.

18 (d) For purposes of this section, the Franchise Tax Board shall  
19 do all of the following:

20 (1) Review the books and records of all taxpayers allocated a  
21 credit pursuant to this section to ensure compliance with the terms  
22 and conditions of the written agreement between the taxpayer and  
23 the commission.

24 (2) Notwithstanding Section 19542, notify the commission of  
25 a possible breach of the written agreement by a taxpayer and  
26 provide detailed information regarding the basis for that  
27 determination.

28 (e) In the case where the credit allowed under this section  
29 exceeds the “net tax,” as defined in Section 17039, for a taxable  
30 year, the excess credit may be carried over to reduce the “net tax”  
31 in the following taxable year, and succeeding five taxable years,  
32 if necessary, until the credit has been exhausted.

33 (f) Any disallowance, in whole or in part, of a credit approved  
34 by the commission shall be treated as a mathematical error  
35 appearing on the return. Any amount of tax resulting from that  
36 disallowance shall be assessed by the Franchise Tax Board in the  
37 same manner as provided by Section 19051. The amount of tax  
38 resulting from the disallowance shall be added to the tax otherwise  
39 due by the taxpayer for the taxable year in which the committee’s  
40 disallowance determination occurred.

SEC. 2. Section 17053.85 of the Revenue and Taxation Code is amended to read:

17053.85. (a) (1) For taxable years beginning on or after January 1, 2011, there shall be allowed to a qualified taxpayer a credit against the “net tax,” as defined in Section 17039, in an amount equal to the applicable percentage, as specified in paragraph (4), of the qualified expenditures for the production of a qualified motion picture in California.

(2) The credit shall be allowed for the taxable year in which the California Film Commission issues the credit certificate pursuant to subdivision (g) for the qualified motion picture, and shall be for the applicable percentage of all qualified expenditures paid or incurred by the qualified taxpayer in all taxable years for that qualified motion picture.

(3) The amount of the credit allowed to a qualified taxpayer shall be limited to the amount specified in the credit certificate issued to the qualified taxpayer by the California Film Commission pursuant to subdivision (g).

(4) For purposes of paragraphs (1) and (2), the applicable percentage shall be:

(A) ~~Twenty~~ (i) For taxable years beginning on or after January 1, 2011, and before January 1, 2014, 20 percent of the qualified expenditures attributable to the production of a qualified motion picture in California.

(ii) For taxable years beginning on or after January 1, 2014, 20 percent of the qualified expenditures attributable to the production of a qualified motion picture in California of up to one hundred million dollars (\$100,000,000).

(B) ~~Twenty-five~~ (i) For taxable years beginning on or after January 1, 2011, and before January 1, 2014, 25 percent of the qualified expenditures attributable to the production of a qualified motion picture in California where the qualified motion picture is a television series that relocated to California or an independent film.

(ii) For taxable years beginning on or after January 1, 2014, 25 percent of the qualified expenditures attributable to the production of a qualified motion picture in California where the qualified motion picture is an independent film.

1 (C) (i) *The California Film Commission may increase the*  
2 *applicable percentage for a taxpayer based on the following*  
3 *criteria:*

4 (I) *By an additional \_\_\_\_ percent of the qualified expenditures*  
5 *that are attributable to qualified wages paid to California residents*  
6 *or California businesses.*

7 (II) *By an additional \_\_\_\_ percent of the qualified expenditures*  
8 *that are made in a rural area or in a city or an unincorporated*  
9 *area that has an unemployment level at or above \_\_\_\_ percent*  
10 *based on data collected and published by the Employment*  
11 *Development Department.*

12 (ii) *For purposes of this subparagraph, “California business”*  
13 *means a person, incorporated or qualified to do business within*  
14 *the state, that holds a current California business license, that*  
15 *provides goods or services under the name that appears on that*  
16 *business license, that has maintained a place of business within*  
17 *California staffed by the person or an employee of that person for*  
18 *a period of at least six months immediately preceding the date the*  
19 *goods or services were provided, and that is either a sole*  
20 *proprietorship whose proprietor is a resident of California, a*  
21 *limited liability company whose members are all residents of*  
22 *California, or a partnership where all partners are residents of*  
23 *California.*

24 (b) *For purposes of this section:*

25 (1) *“Ancillary product” means any article for sale to the public*  
26 *that contains a portion of, or any element of, the qualified motion*  
27 *picture.*

28 (2) *“Budget” means an estimate of all expenses paid or incurred*  
29 *during the production period of a qualified motion picture. It shall*  
30 *be the same budget used by the qualified taxpayer and production*  
31 *company for all qualified motion picture purposes.*

32 (3) *“Clip use” means a use of any portion of a motion picture,*  
33 *other than the qualified motion picture, used in the qualified motion*  
34 *picture.*

35 (4) *“Credit certificate” means the certificate issued by the*  
36 *California Film Commission pursuant to subparagraph (C) of*  
37 *paragraph (2) of subdivision (g).*

38 (5) (A) *“Employee fringe benefits” means the amount allowable*  
39 *as a deduction under this part to the qualified taxpayer involved*  
40 *in the production of the qualified motion picture, exclusive of any*

1 amounts contributed by employees, for any year during the  
2 production period with respect to any of the following:

3 (i) Employer contributions under any pension, profit-sharing,  
4 annuity, or similar plan.

5 (ii) Employer-provided coverage under any accident or health  
6 plan for employees.

7 (iii) The employer's cost of life or disability insurance provided  
8 to employees.

9 (B) Any amount treated as wages under clause (i) of  
10 subparagraph (A) of paragraph (18) shall not be taken into account  
11 under this paragraph.

12 (6) "Independent film" means a motion picture with a minimum  
13 budget of one million dollars (\$1,000,000) and a maximum budget  
14 of ten million dollars (\$10,000,000) that is produced by a company  
15 that is not publicly traded and publicly traded companies do not  
16 own, directly or indirectly, more than 25 percent of the producing  
17 company.

18 (7) "Licensing" means any grant of rights to distribute the  
19 qualified motion picture, in whole or in part.

20 (8) "New use" means any use of a motion picture in a medium  
21 other than the medium for which it was initially created.

22 (9) (A) "Postproduction" means the final activities in a qualified  
23 motion picture's production, including editing, foley recording,  
24 automatic dialogue replacement, sound editing, scoring and music  
25 editing, beginning and end credits, negative cutting, negative  
26 processing and duplication, the addition of sound and visual effects,  
27 soundmixing, film-to-tape transfers, encoding, and color correction.

28 (B) "Postproduction" does not include the manufacture or  
29 shipping of release prints.

30 (10) "Preproduction" means the process of preparation for actual  
31 physical production which begins after a qualified motion picture  
32 has received a firm agreement of financial commitment, or is  
33 greenlit, with, for example, the establishment of a dedicated  
34 production office, the hiring of key crew members, and includes,  
35 but is not limited to, activities that include location scouting and  
36 execution of contracts with vendors of equipment and stage space.

37 (11) "Principal photography" means the phase of production  
38 during which the motion picture is actually shot, as distinguished  
39 from preproduction and postproduction.

1 (12) “Production period” means the period beginning with  
2 preproduction and ending upon completion of postproduction.

3 (13) “Qualified entity” means a personal service corporation as  
4 defined in Section 269A(b)(1) of the Internal Revenue Code, a  
5 payroll services corporation, or any entity receiving qualified wages  
6 with respect to services performed by a qualified individual.

7 (14) (A) “Qualified individual” means any individual who  
8 performs services during the production period in an activity related  
9 to the production of a qualified motion picture.

10 (B) “Qualified individual” shall not include either of the  
11 following:

12 (i) Any individual related to the qualified taxpayer as described  
13 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal  
14 Revenue Code.

15 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of  
16 the Internal Revenue Code, of the qualified taxpayer.

17 (15) (A) “Qualified motion picture” means a motion picture  
18 that is produced for distribution to the general public, regardless  
19 of medium, that is one of the following:

20 (i) ~~A—(I) For taxable years beginning on or after January 1,~~  
21 ~~2011, and before January 1, 2014, a feature with a minimum~~  
22 ~~production budget of one million dollars (\$1,000,000) and a~~  
23 ~~maximum production budget of seventy-five million dollars~~  
24 ~~(\$75,000,000).~~

25 ~~(II) For taxable years beginning on or after January 1, 2014,~~  
26 ~~a feature with a minimum production budget of one million dollars~~  
27 ~~(\$1,000,000).~~

28 (ii) A movie of the week or miniseries with a minimum  
29 production budget of five hundred thousand dollars (\$500,000).

30 (iii) ~~A—(I) For taxable years beginning on or after January 1,~~  
31 ~~2011, and before January 1, 2014, a new television series produced~~  
32 ~~in California with a minimum production budget of one million~~  
33 ~~dollars (\$1,000,000) licensed for original distribution on basic~~  
34 ~~cable.~~

35 ~~(II) For taxable years beginning on or after January 1, 2014,~~  
36 ~~a television series produced in California with a minimum~~  
37 ~~production budget of one million dollars (\$1,000,000) licensed~~  
38 ~~for original distribution on basic cable or on network cable, and~~  
39 ~~a pilot television series.~~

40 (iv) An independent film.

1 (v) A television series that relocated to California.

2 (B) To qualify as a “qualified motion picture,” all of the  
3 following conditions shall be satisfied:

4 (i) At least 75 percent of the production days occur wholly in  
5 California or 75 percent of the production budget is incurred for  
6 payment for services performed within the state and the purchase  
7 or rental of property used within the state.

8 (ii) Production of the qualified motion picture is completed  
9 within 30 months from the date on which the qualified taxpayer’s  
10 application is approved by the California Film Commission. For  
11 purposes of this section, a qualified motion picture is “completed”  
12 when the process of postproduction has been finished.

13 (iii) The copyright for the motion picture is registered with the  
14 United States Copyright Office pursuant to Title 17 of the United  
15 States Code.

16 (iv) Principal photography of the qualified motion picture  
17 commences after the date on which the application is approved by  
18 the California Film Commission, but no later than 180 days after  
19 the date of that approval.

20 (C) For the purposes of subparagraph (A), in computing the  
21 total wages paid or incurred for the production of a qualified  
22 motion picture, all amounts paid or incurred by all persons or  
23 entities that share in the costs of the qualified motion picture shall  
24 be aggregated.

25 (D) “Qualified motion picture” shall not include commercial  
26 advertising, music videos, a motion picture produced for private  
27 noncommercial use, such as weddings, graduations, or as part of  
28 an educational course and made by students, a news program,  
29 current events or public events program, talk show, game show,  
30 sporting event or activity, awards show, telethon or other  
31 production that solicits funds, reality television program, clip-based  
32 programming if more than 50 percent of the content is comprised  
33 of licensed footage, documentaries, variety programs, daytime  
34 dramas, strip shows, one-half hour (air time) episodic television  
35 shows, or any production that falls within the recordkeeping  
36 requirements of Section 2257 of Title 18 of the United States Code.

37 (16) “Qualified expenditures” means amounts paid or incurred  
38 to purchase or lease tangible personal property used within this  
39 state in the production of a qualified motion picture and payments,



1 including qualified wages, for services performed within this state  
2 in the production of a qualified motion picture.

3 (17) (A) “Qualified taxpayer” means a taxpayer who has paid  
4 or incurred qualified expenditures and has been issued a credit  
5 certificate by the California Film Commission pursuant to  
6 subdivision (g).

7 (B) In the case of any pass-thru entity, the determination of  
8 whether a taxpayer is a qualified taxpayer under this section shall  
9 be made at the entity level and any credit under this section is not  
10 allowed to the pass-thru entity, but shall be passed through to the  
11 partners or shareholders in accordance with applicable provisions  
12 of Part 10 (commencing with Section 17001) or Part 11  
13 (commencing with Section 23001). For purposes of this paragraph,  
14 “pass-thru entity” means any entity taxed as a partnership or “S”  
15 corporation.

16 (18) (A) “Qualified wages” means all of the following:

17 (i) Any wages subject to withholding under Division 6  
18 (commencing with Section 13000) of the Unemployment Insurance  
19 Code that were paid or incurred by any taxpayer involved in the  
20 production of a qualified motion picture with respect to a qualified  
21 individual for services performed on the qualified motion picture  
22 production within this state.

23 (ii) The portion of any employee fringe benefits paid or incurred  
24 by any taxpayer involved in the production of the qualified motion  
25 picture that are properly allocable to qualified wage amounts  
26 described in clause (i).

27 (iii) Any payments made to a qualified entity for services  
28 performed in this state by qualified individuals within the meaning  
29 of paragraph (14).

30 (iv) Remuneration paid to an independent contractor who is a  
31 qualified individual for services performed within this state by that  
32 qualified individual.

33 (B) “Qualified wages” shall not include any of the following:

34 (i) Expenses, including wages, related to new use, reuse, clip  
35 use, licensing, secondary markets, or residual compensation, or  
36 the creation of any ancillary product, including, but not limited to,  
37 a soundtrack album, toy, game, trailer, or teaser.

38 (ii) Expenses, including wages, paid or incurred with respect to  
39 acquisition, development, turnaround, or any rights thereto.

1 (iii) Expenses, including wages, related to financing, overhead,  
2 marketing, promotion, or distribution of a qualified motion picture.

3 (iv) Expenses, including wages, paid per person per qualified  
4 motion picture for writers, directors, music directors, music  
5 composers, music supervisors, producers, and performers, other  
6 than background actors with no scripted lines.

7 (19) “Residual compensation” means supplemental  
8 compensation paid at the time that a motion picture is exhibited  
9 through new use, reuse, clip use, or in secondary markets, as  
10 distinguished from payments made during production.

11 (20) “Reuse” means any use of a qualified motion picture in the  
12 same medium for which it was created, following the initial use  
13 in that medium.

14 (21) “Secondary markets” means media in which a qualified  
15 motion picture is exhibited following the initial media in which it  
16 is exhibited.

17 (22) “Television series that relocated to California” means a  
18 television series, without regard to episode length or initial media  
19 exhibition, that filmed all of its prior season or seasons outside of  
20 California and for which the taxpayer certifies that the credit  
21 provided pursuant to this section is the primary reason for  
22 relocating to California.

23 (c) (1) Notwithstanding any other law, a qualified taxpayer  
24 may sell any credit allowed under this section that is attributable  
25 to an independent film, as defined in paragraph (6) of subdivision  
26 (b), to an unrelated party.

27 (2) The qualified taxpayer shall report to the Franchise Tax  
28 Board prior to the sale of the credit, in the form and manner  
29 specified by the Franchise Tax Board, all required information  
30 regarding the purchase and sale of the credit, including the social  
31 security or other taxpayer identification number of the unrelated  
32 party to whom the credit has been sold, the face amount of the  
33 credit sold, and the amount of consideration received by the  
34 qualified taxpayer for the sale of the credit.

35 (3) In the case where the credit allowed under this section  
36 exceeds the “net tax,” the excess credit may be carried over to  
37 reduce the “net tax” in the following taxable year, and succeeding  
38 five taxable years, if necessary, until the credit has been exhausted.

1 (4) A credit shall not be sold pursuant to this subdivision to  
2 more than one taxpayer, nor may the credit be resold by the  
3 unrelated party to another taxpayer or other party.

4 (5) A party that has acquired tax credits under this section shall  
5 be subject to the requirements of this section.

6 (6) In no event may a qualified taxpayer assign or sell any tax  
7 credit to the extent the tax credit allowed by this section is claimed  
8 on any tax return of the qualified taxpayer.

9 (7) In the event that both the taxpayer originally allocated a  
10 credit under this section by the California Film Commission and  
11 a taxpayer to whom the credit has been sold both claim the same  
12 amount of credit on their tax returns, the Franchise Tax Board may  
13 disallow the credit of either taxpayer, so long as the statute of  
14 limitations upon assessment remains open.

15 (8) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
16 Division 3 of Title 2 of the Government Code does not apply to  
17 any standard, criterion, procedure, determination, rule, notice, or  
18 guideline established or issued by the Franchise Tax Board  
19 pursuant to this subdivision.

20 (9) Subdivision (g) of Section 17039 shall not apply to any  
21 credit sold pursuant to this subdivision.

22 (10) For purposes of this subdivision, the unrelated party or  
23 parties that purchase a credit pursuant to this subdivision shall be  
24 treated as a qualified taxpayer pursuant to paragraph (1) of  
25 subdivision (a).

26 (d) No credit shall be allowed pursuant to this section unless  
27 the qualified taxpayer provides the following to the California  
28 Film Commission:

29 (1) Identification of each qualified individual.

30 (2) The specific start and end dates of production.

31 (3) The total wages paid.

32 (4) The amount of qualified wages paid to each qualified  
33 individual.

34 (5) The copyright registration number, as reflected on the  
35 certificate of registration issued under the authority of Section 410  
36 of Title 17 of the United States Code, relating to registration of  
37 claim and issuance of certificate. The registration number shall be  
38 provided on the return claiming the credit.

1 (6) The total amounts paid or incurred to purchase or lease  
2 tangible personal property used in the production of a qualified  
3 motion picture.

4 (7) Information to substantiate its qualified expenditures.

5 (8) Information required by the California Film Commission  
6 under regulations promulgated pursuant to subdivision (g)  
7 necessary to verify the amount of credit claimed.

8 (e) The California Film Commission may prescribe rules and  
9 regulations to carry out the purposes of this section including any  
10 rules and regulations necessary to establish procedures, processes,  
11 requirements, and rules identified in or required to implement this  
12 section. The regulations shall include provisions to set aside a  
13 percentage of annual credit allocations for independent films,  
14 *television series, and qualified motion pictures pursuant to*  
15 *subdivision (i).*

16 (f) If the qualified taxpayer fails to provide the copyright  
17 registration number as required in paragraph (5) of subdivision  
18 (d), the credit shall be disallowed and assessed and collected under  
19 Section 19051 until the procedures are satisfied.

20 (g) For purposes of this section, the California Film Commission  
21 shall do the following:

22 (1) On or after July 1, 2009, ~~and before July 1, 2017~~, allocate  
23 tax credits to applicants.

24 (A) Establish a procedure for applicants to file with the  
25 California Film Commission a written application, on a form jointly  
26 prescribed by the California Film Commission and the Franchise  
27 Tax Board for the allocation of the tax credit. The application shall  
28 include, but not be limited to, the following information:

29 (i) The budget for the motion picture production.

30 (ii) The number of production days.

31 (iii) A financing plan for the production.

32 (iv) The diversity of the workforce employed by the applicant,  
33 including, but not limited to, the ethnic and racial makeup of the  
34 individuals employed by the applicant during the production of  
35 the qualified motion picture, to the extent possible.

36 (v) All members of a combined reporting group, if known at  
37 the time of the application.

38 (vi) Financial information, if available, including, but not limited  
39 to, the most recently produced balance sheets, annual statements  
40 of profits and losses, audited or unaudited financial statements,

1 summary budget projections or results, or the functional equivalent  
2 of these documents of a partnership or owner of a single member  
3 limited liability company that is disregarded pursuant to Section  
4 23038. The information provided pursuant to this clause shall be  
5 confidential and shall not be subject to public disclosure.

6 (vii) The names of all partners in a partnership not publicly  
7 traded or the names of all members of a limited liability company  
8 classified as a partnership not publicly traded for California income  
9 tax purposes that have a financial interest in the applicant's  
10 qualified motion picture. The information provided pursuant to  
11 this clause shall be confidential and shall not be subject to public  
12 disclosure.

13 (viii) Detailed narratives, for use only by the Legislative  
14 Analyst's Office in conducting a study of the effectiveness of this  
15 credit, that describe the extent to which the credit is expected to  
16 influence or affect filming and other business location decisions,  
17 hiring decisions, salary decisions, and any other financial matters  
18 of the applicant.

19 (ix) Any other information deemed relevant by the California  
20 Film Commission or the Franchise Tax Board.

21 (B) Establish criteria, consistent with the requirements of this  
22 section, for allocating tax credits.

23 (C) Determine and designate applicants who meet the  
24 requirements of this section.

25 (D) Process and approve, or reject, all applications on a  
26 first-come-first-served basis.

27 (E) Subject to the annual cap established as provided in  
28 subdivision (i), allocate an aggregate amount of credits under this  
29 section and Section 23685, and allocate any carryover of  
30 unallocated credits from prior years.

31 (2) Certify tax credits allocated to qualified taxpayers.

32 (A) Establish a verification procedure for the amount of qualified  
33 expenditures paid or incurred by the applicant, including, but not  
34 limited to, updates to the information in subparagraph (A) of  
35 paragraph (1) of subdivision (g).

36 (B) Establish audit requirements that must be satisfied before  
37 a credit certificate may be issued by the California Film  
38 Commission.

1 (C) (i) Establish a procedure for a qualified taxpayer to report  
2 to the California Film Commission, prior to the issuance of a credit  
3 certificate, the following information:

4 (I) If readily available, a list of the states, provinces, or other  
5 jurisdictions in which any member of the applicant's combined  
6 reporting group in the same business unit as the qualified taxpayer  
7 that, in the preceding calendar year, has produced a qualified  
8 motion picture intended for release in the United States market.  
9 For purposes of this clause, "qualified motion picture" shall not  
10 include any episodes of a television series that were complete or  
11 in production prior to July 1, 2009.

12 (II) Whether a qualified motion picture described in subclause  
13 (I) was awarded any financial incentive by the state, province, or  
14 other jurisdiction that was predicated on the performance of  
15 primary principal photography or postproduction in that location.

16 (ii) The California Film Commission may provide that the report  
17 required by this subparagraph be filed in a single report provided  
18 on a calendar year basis for those qualified taxpayers that receive  
19 multiple credit certificates in a calendar year.

20 (D) Issue a credit certificate to a qualified taxpayer upon  
21 completion of the qualified motion picture reflecting the credit  
22 amount allocated after qualified expenditures have been verified  
23 under this section. The amount of credit shown in the credit  
24 certificate shall not exceed the amount of credit allocated to that  
25 qualified taxpayer pursuant to this section.

26 (3) Obtain, when possible, the following information from  
27 applicants that do not receive an allocation of credit:

28 (A) Whether the qualified motion picture that was the subject  
29 of the application was completed.

30 (B) If completed, in which state or foreign jurisdiction was the  
31 primary principal photography completed.

32 (C) Whether the applicant received any financial incentives  
33 from the state or foreign jurisdiction to make the qualified motion  
34 picture in that location.

35 (4) Provide the Legislative Analyst's Office, upon request, any  
36 or all application materials or any other materials received from,  
37 or submitted by, the applicants, in electronic format when available,  
38 including, but not limited to, information provided pursuant to  
39 clauses (i) to (ix), inclusive, of subparagraph (A) of paragraph (1).

1 (5) The information provided to the California Film Commission  
2 pursuant to this section shall constitute confidential tax information  
3 for purposes of Article 2 (commencing with Section 19542) of  
4 Chapter 7 of Part 10.2.

5 (h) (1) The California Film Commission shall annually provide  
6 the Legislative Analyst's Office, the Franchise Tax Board, and the  
7 board with a list of qualified taxpayers and the tax credit amounts  
8 allocated to each qualified taxpayer by the California Film  
9 Commission. The list shall include the names and taxpayer  
10 identification numbers, including taxpayer identification numbers  
11 of each partner or shareholder, as applicable, of the qualified  
12 taxpayer.

13 (2) (A) Notwithstanding paragraph (5) of subdivision (g), the  
14 California Film Commission shall annually post on its Internet  
15 Web site and make available for public release the following:

16 (i) A table which includes all of the following information: a  
17 list of qualified taxpayers and the tax credit amounts allocated to  
18 each qualified taxpayer by the California Film Commission, the  
19 number of production days in California the qualified taxpayer  
20 represented in its application would occur, the number of California  
21 jobs that the qualified taxpayer represented in its application would  
22 be directly created by the production, and the total amount of  
23 qualified expenditures expected to be spent by the production.

24 (ii) A narrative staff summary describing the production of the  
25 qualified taxpayer as well as background information regarding  
26 the qualified taxpayer contained in the qualified taxpayer's  
27 application for the credit.

28 (B) Nothing in this subdivision shall be construed to make the  
29 information submitted by an applicant for a tax credit under this  
30 section a public record.

31 (i) (1) The aggregate amount of credits that may be allocated  
32 in any fiscal year pursuant to this section and Section 23685 shall  
33 be an amount equal to the sum of all of the following:

34 (A) (i) One hundred million dollars (\$100,000,000) in credits  
35 for the 2009–10 fiscal year and each fiscal year thereafter, through  
36 and including the ~~2016–17~~ 2014–15 fiscal year.

37 (ii)        dollars (\$      ) in credits for the 2015–16 fiscal year  
38 and each fiscal year thereafter.

39 (B) The unused allocation credit amount, if any, for the  
40 preceding fiscal year.

1 (C) The amount of previously allocated credits not certified.

2 (2) If the amount of credits applied for in any particular fiscal  
3 year exceeds the aggregate amount of tax credits authorized to be  
4 allocated under this section, such excess shall be treated as having  
5 been applied for on the first day of the subsequent fiscal year.  
6 However, credits may not be allocated from a fiscal year other  
7 than the fiscal year in which the credit was originally applied for  
8 or the immediately succeeding fiscal year.

9 (3) Notwithstanding the foregoing, the California Film  
10 Commission shall set aside up to ten million dollars (\$10,000,000)  
11 of tax credits each fiscal year for independent films allocated in  
12 accordance with rules and regulations developed pursuant to  
13 subdivision (e).

14 (4) *For taxable years beginning on or after January 1, 2014,*  
15 *notwithstanding the foregoing, the California Film Commission*  
16 *shall set aside up to \_\_\_\_\_ dollars (\$\_\_\_\_\_) of tax credits each fiscal*  
17 *year for television series allocated in accordance with rules and*  
18 *regulations developed pursuant to subdivision (e).*

19 (5) (A) *For taxable years beginning on or after January 1,*  
20 *2014, notwithstanding the foregoing, the California Film*  
21 *Commission shall set aside up to \_\_\_\_\_ dollars (\$\_\_\_\_\_) of tax*  
22 *credits each fiscal year for a qualified motion picture allocated in*  
23 *accordance with rules and regulations developed pursuant to*  
24 *subdivision (e).*

25 (B) *For purposes of this paragraph, “qualified motion picture”*  
26 *means a motion picture that is produced for distribution to the*  
27 *general public, regardless of medium, that is either a feature with*  
28 *a minimum production budget of one million dollars (\$1,000,000)*  
29 *or an independent film and that completed its preproduction and*  
30 *principal photography outside of the state and its postproduction*  
31 *within the state.*

32 ~~(4)~~

33 (6) Any act that reduces the amount that may be allocated  
34 pursuant to paragraph (1) constitutes a change in state taxes for  
35 the purpose of increasing revenues within the meaning of Section  
36 3 of Article XIII A of the California Constitution and may be passed  
37 by not less than two-thirds of all Members elected to each of the  
38 two houses of the Legislature.

39 (j) The California Film Commission shall have the authority to  
40 allocate tax credits in accordance with this section and in



1 accordance with any regulations prescribed pursuant to subdivision  
2 (e) upon adoption.

3 SEC. 3. Section 23665 is added to the Revenue and Taxation  
4 Code, to read:

5 23665. (a) (1) For taxable years beginning on or after January  
6 1, 2014, there shall be allowed as a credit against the “tax,” as  
7 defined in Section 23036, an amount as determined by the  
8 commission pursuant to paragraph (2).

9 (2) The credit under this section shall be allocated by the  
10 commission with respect to the 2014–15 fiscal year and each fiscal  
11 year thereafter. The amount of credit allocated to a taxpayer with  
12 respect to a fiscal year pursuant to this section shall be as set forth  
13 in a written agreement between the commission and the taxpayer  
14 and shall not exceed 5 percent of an investment amount the  
15 taxpayer has made in a qualified film and digital media  
16 infrastructure project.

17 (b) For purposes of this section:

18 (1) “Commission” means the California Film Commission.

19 (2) (A) “Qualified film and digital media infrastructure project”  
20 means a film, video, television, or digital media production and  
21 postproduction facility located in this state, including any movable  
22 and immovable property and equipment related to that facility and  
23 any other facility that is a necessary component of the primary  
24 facility, that has a minimum infrastructure budget of \_\_\_\_ dollars  
25 (\$\_\_\_\_\_).

26 (B) “Qualified film and digital media infrastructure project”  
27 does not include a movie theater or other commercial exhibition  
28 facility.

29 (c) For purposes of this section, the commission shall do the  
30 following:

31 (1) Negotiate with a taxpayer the terms and conditions of  
32 proposed written agreements that provide the credit allowed  
33 pursuant to this section to a taxpayer.

34 (2) Inform the Franchise Tax Board of the terms and conditions  
35 of the written agreement.

36 (3) Inform the Franchise Tax Board of any disallowance, in  
37 whole or in part, of a previously allocated credit upon approval of  
38 the disallowance by the committee.

39 (d) For purposes of this section, the Franchise Tax Board shall  
40 do all of the following:

1 (1) Review the books and records of all taxpayers allocated a  
2 credit pursuant to this section to ensure compliance with the terms  
3 and conditions of the written agreement between the taxpayer and  
4 the commission.

5 (2) Notwithstanding Section 19542, notify the commission of  
6 a possible breach of the written agreement by a taxpayer and  
7 provide detailed information regarding the basis for that  
8 determination.

9 (e) In the case where the credit allowed under this section  
10 exceeds the “tax,” as defined in Section 23036, for a taxable year,  
11 the excess credit may be carried over to reduce the “tax” in the  
12 following taxable year, and succeeding five taxable years, if  
13 necessary, until the credit has been exhausted.

14 (f) Any disallowance, in whole or in part, of a credit approved  
15 by the commission shall be treated as a mathematical error  
16 appearing on the return. Any amount of tax resulting from that  
17 disallowance shall be assessed by the Franchise Tax Board in the  
18 same manner as provided by Section 19051. The amount of tax  
19 resulting from the disallowance shall be added to the tax otherwise  
20 due by the taxpayer for the taxable year in which the committee’s  
21 disallowance determination occurred.

22 SEC. 4. Section 23685 of the Revenue and Taxation Code is  
23 amended to read:

24 23685. (a) (1) For taxable years beginning on or after January  
25 1, 2011, there shall be allowed to a qualified taxpayer a credit  
26 against the “tax,” as defined in Section 23036, in an amount equal  
27 to the applicable percentage, as specified in paragraph (4), of the  
28 qualified expenditures for the production of a qualified motion  
29 picture in California.

30 (2) The credit shall be allowed for the taxable year in which the  
31 California Film Commission issues the credit certificate pursuant  
32 to subdivision (g) for the qualified motion picture, and shall be for  
33 the applicable percentage of all qualified expenditures paid or  
34 incurred by the qualified taxpayer in all taxable years for that  
35 qualified motion picture.

36 (3) The amount of the credit allowed to a qualified taxpayer  
37 shall be limited to the amount specified in the credit certificate  
38 issued to the qualified taxpayer by the California Film Commission  
39 pursuant to subdivision (g).

(4) For purposes of paragraphs (1) and (2), the applicable percentage shall be:

(A) ~~Twenty~~ (i) *For taxable years beginning on or after January 1, 2014, 20 percent of the qualified expenditures attributable to the production of a qualified motion picture in California.*

(ii) *For taxable years beginning on or after January 1, 2014, 20 percent of the qualified expenditures attributable to the production of a qualified motion picture in California of up to one hundred million dollars (\$100,000,000).*

(B) ~~Twenty-five~~ (i) *For taxable years beginning on or after January 1, 2011, and before January 1, 2014, 25 percent of the qualified expenditures attributable to the production of a qualified motion picture in California where the qualified motion picture is a television series that relocated to California or an independent film.*

(ii) *For taxable years beginning on or after January 1, 2014, 25 percent of the qualified expenditures attributable to the production of a qualified motion picture in California where the qualified motion picture is an independent film.*

(C) (i) *The California Film Commission may increase the applicable percentage for a taxpayer based on the following criteria:*

(I) *By an additional \_\_\_\_ percent of the qualified expenditures that are attributable to qualified wages paid to California residents or California businesses.*

(II) *By an additional \_\_\_\_ percent of the qualified expenditures that are made in a rural area or in a city or an unincorporated area that has an unemployment level at or above \_\_\_\_ percent based on data collected and published by the Employment Development Department.*

(ii) *For purposes of this subparagraph, "California business" means a person, incorporated or qualified to do business within the state, that holds a current California business license, that provides goods or services under the name that appears on that business license, that has maintained a place of business within California staffed by the person or an employee of that person for a period of at least six months immediately preceding the date the goods or services were provided, and that is either a sole proprietorship whose proprietor is a resident of California, a limited liability company whose members are all residents of*

1 *California, or a partnership where all partners are residents of*  
2 *California.*

3 (b) For purposes of this section:

4 (1) “Ancillary product” means any article for sale to the public  
5 that contains a portion of, or any element of, the qualified motion  
6 picture.

7 (2) “Budget” means an estimate of all expenses paid or incurred  
8 during the production period of a qualified motion picture. It shall  
9 be the same budget used by the qualified taxpayer and production  
10 company for all qualified motion picture purposes.

11 (3) “Clip use” means a use of any portion of a motion picture,  
12 other than the qualified motion picture, used in the qualified motion  
13 picture.

14 (4) “Credit certificate” means the certificate issued by the  
15 California Film Commission pursuant to subparagraph (C) of  
16 paragraph (2) of subdivision (g).

17 (5) (A) “Employee fringe benefits” means the amount allowable  
18 as a deduction under this part to the qualified taxpayer involved  
19 in the production of the qualified motion picture, exclusive of any  
20 amounts contributed by employees, for any year during the  
21 production period with respect to any of the following:

22 (i) Employer contributions under any pension, profit-sharing,  
23 annuity, or similar plan.

24 (ii) Employer-provided coverage under any accident or health  
25 plan for employees.

26 (iii) The employer’s cost of life or disability insurance provided  
27 to employees.

28 (B) Any amount treated as wages under clause (i) of  
29 subparagraph (A) of paragraph (18) shall not be taken into account  
30 under this paragraph.

31 (6) “Independent film” means a motion picture with a minimum  
32 budget of one million dollars (\$1,000,000) and a maximum budget  
33 of ten million dollars (\$10,000,000) that is produced by a company  
34 that is not publicly traded and publicly traded companies do not  
35 own, directly or indirectly, more than 25 percent of the producing  
36 company.

37 (7) “Licensing” means any grant of rights to distribute the  
38 qualified motion picture, in whole or in part.

39 (8) “New use” means any use of a motion picture in a medium  
40 other than the medium for which it was initially created.

(9) (A) “Postproduction” means the final activities in a qualified motion picture’s production, including editing, foley recording, automatic dialogue replacement, sound editing, scoring and music editing, beginning and end credits, negative cutting, negative processing and duplication, the addition of sound and visual effects, soundmixing, film-to-tape transfers, encoding, and color correction.

(B) “Postproduction” does not include the manufacture or shipping of release prints.

(10) “Preproduction” means the process of preparation for actual physical production which begins after a qualified motion picture has received a firm agreement of financial commitment, or is greenlit, with, for example, the establishment of a dedicated production office, the hiring of key crew members, and includes, but is not limited to, activities that include location scouting and execution of contracts with vendors of equipment and stage space.

(11) “Principal photography” means the phase of production during which the motion picture is actually shot, as distinguished from preproduction and postproduction.

(12) “Production period” means the period beginning with preproduction and ending upon completion of postproduction.

(13) “Qualified entity” means a personal service corporation as defined in Section 269A(b)(1) of the Internal Revenue Code, a payroll services corporation, or any entity receiving qualified wages with respect to services performed by a qualified individual.

(14) (A) “Qualified individual” means any individual who performs services during the production period in an activity related to the production of a qualified motion picture.

(B) “Qualified individual” shall not include either of the following:

(i) Any individual related to the qualified taxpayer as described in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal Revenue Code.

(ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of the Internal Revenue Code, of the qualified taxpayer.

(15) (A) “Qualified motion picture” means a motion picture that is produced for distribution to the general public, regardless of medium that is one of the following:

(i) ~~A—(I)~~ *For taxable years beginning on or after January 1, 2011, and before January 1, 2014, a feature with a minimum production budget of one million dollars (\$1,000,000) and a*

1 maximum production budget of seventy-five million dollars  
2 (\$75,000,000).

3 *(II) For taxable years beginning on or after January 1, 2014,*  
4 *a feature with a minimum production budget of one million dollars*  
5 *(\$1,000,000).*

6 (ii) A movie of the week or miniseries with a minimum  
7 production budget of five hundred thousand dollars (\$500,000).

8 (iii) ~~A~~*(I) For taxable years beginning on or after January 1,*  
9 *2011, and before January 1, 2014, a new television series produced*  
10 *in California with a minimum production budget of one million*  
11 *dollars (\$1,000,000) licensed for original distribution on basic*  
12 *cable.*

13 *(II) For taxable years beginning on or after January 1, 2014,*  
14 *a television series produced in California with a minimum*  
15 *production budget of one million dollars (\$1,000,000) licensed*  
16 *for original distribution on basic cable or on network cable, and*  
17 *a pilot television series.*

18 (iv) An independent film.

19 (v) A television series that relocated to California.

20 (B) To qualify as a “qualified motion picture,” all of the  
21 following conditions shall be satisfied:

22 (i) At least 75 percent of the production days occur wholly in  
23 California or 75 percent of the production budget is incurred for  
24 payment for services performed within the state and the purchase  
25 or rental of property used within the state.

26 (ii) Production of the qualified motion picture is completed  
27 within 30 months from the date on which the qualified taxpayer’s  
28 application is approved by the California Film Commission. For  
29 purposes of this section, a qualified motion picture is “completed”  
30 when the process of postproduction has been finished.

31 (iii) The copyright for the motion picture is registered with the  
32 United States Copyright Office pursuant to Title 17 of the United  
33 States Code.

34 (iv) Principal photography of the qualified motion picture  
35 commences after the date on which the application is approved by  
36 the California Film Commission, but no later than 180 days after  
37 the date of that approval.

38 (C) For the purposes of subparagraph (A), in computing the  
39 total wages paid or incurred for the production of a qualified  
40 motion picture, all amounts paid or incurred by all persons or

1 entities that share in the costs of the qualified motion picture shall  
2 be aggregated.

3 (D) “Qualified motion picture” shall not include commercial  
4 advertising, music videos, a motion picture produced for private  
5 noncommercial use, such as weddings, graduations, or as part of  
6 an educational course and made by students, a news program,  
7 current events or public events program, talk show, game show,  
8 sporting event or activity, awards show, telethon or other  
9 production that solicits funds, reality television program, clip-based  
10 programming if more than 50 percent of the content is comprised  
11 of licensed footage, documentaries, variety programs, daytime  
12 dramas, strip shows, one-half hour (air time) episodic television  
13 shows, or any production that falls within the recordkeeping  
14 requirements of Section 2257 of Title 18 of the United States Code.

15 (16) “Qualified expenditures” means amounts paid or incurred  
16 to purchase or lease tangible personal property used within this  
17 state in the production of a qualified motion picture and payments,  
18 including qualified wages, for services performed within this state  
19 in the production of a qualified motion picture.

20 (17) (A) “Qualified taxpayer” means a taxpayer who has paid  
21 or incurred qualified expenditures and has been issued a credit  
22 certificate by the California Film Commission pursuant to  
23 subdivision (g).

24 (B) (i) In the case of any pass-thru entity, the determination of  
25 whether a taxpayer is a qualified taxpayer under this section shall  
26 be made at the entity level and any credit under this section is not  
27 allowed to the pass-thru entity, but shall be passed through to the  
28 partners or shareholders in accordance with applicable provisions  
29 of Part 10 (commencing with Section 17001) or Part 11  
30 (commencing with Section 23001). For purposes of this paragraph,  
31 “pass-thru entity” means any entity taxed as a partnership or “S”  
32 corporation.

33 (ii) In the case of an “S” corporation, the credit allowed under  
34 this section shall not be used by an “S” corporation as a credit  
35 against a tax imposed under Chapter 4.5 (commencing with Section  
36 23800) of Part 11 of Division 2.

37 (18) (A) “Qualified wages” means all of the following:

38 (i) Any wages subject to withholding under Division 6  
39 (commencing with Section 13000) of the Unemployment Insurance  
40 Code that were paid or incurred by any taxpayer involved in the

1 production of a qualified motion picture with respect to a qualified  
2 individual for services performed on the qualified motion picture  
3 production within this state.

4 (ii) The portion of any employee fringe benefits paid or incurred  
5 by any taxpayer involved in the production of the qualified motion  
6 picture that are properly allocable to qualified wage amounts  
7 described in clause (i).

8 (iii) Any payments made to a qualified entity for services  
9 performed in this state by qualified individuals within the meaning  
10 of paragraph (14).

11 (iv) Remuneration paid to an independent contractor who is a  
12 qualified individual for services performed within this state by that  
13 qualified individual.

14 (B) “Qualified wages” shall not include any of the following:

15 (i) Expenses, including wages, related to new use, reuse, clip  
16 use, licensing, secondary markets, or residual compensation, or  
17 the creation of any ancillary product, including, but not limited to,  
18 a soundtrack album, toy, game, trailer, or teaser.

19 (ii) Expenses, including wages, paid or incurred with respect to  
20 acquisition, development, turnaround, or any rights thereto.

21 (iii) Expenses, including wages, related to financing, overhead,  
22 marketing, promotion, or distribution of a qualified motion picture.

23 (iv) Expenses, including wages, paid per person per qualified  
24 motion picture for writers, directors, music directors, music  
25 composers, music supervisors, producers, and performers, other  
26 than background actors with no scripted lines.

27 (19) “Residual compensation” means supplemental  
28 compensation paid at the time that a motion picture is exhibited  
29 through new use, reuse, clip use, or in secondary markets, as  
30 distinguished from payments made during production.

31 (20) “Reuse” means any use of a qualified motion picture in the  
32 same medium for which it was created, following the initial use  
33 in that medium.

34 (21) “Secondary markets” means media in which a qualified  
35 motion picture is exhibited following the initial media in which it  
36 is exhibited.

37 (22) “Television series that relocated to California” means a  
38 television series, without regard to episode length or initial media  
39 exhibition, that filmed all of its prior season or seasons outside of  
40 California and for which the taxpayer certifies that the credit



1 provided pursuant to this section is the primary reason for  
2 relocating to California.

3 (c) (1) Notwithstanding subdivision (i) of Section 23036, in  
4 the case where the credit allowed by this section exceeds the  
5 taxpayer's tax liability computed under this part, a qualified  
6 taxpayer may elect to assign any portion of the credit allowed  
7 under this section to one or more affiliated corporations for each  
8 taxable year in which the credit is allowed. For purposes of this  
9 subdivision, "affiliated corporation" has the meaning provided in  
10 subdivision (b) of Section 25110, as that section was amended by  
11 Chapter 881 of the Statutes of 1993, as of the last day of the taxable  
12 year in which the credit is allowed, except that "100 percent" is  
13 substituted for "more than 50 percent" wherever it appears in the  
14 section, and "voting common stock" is substituted for "voting  
15 stock" wherever it appears in the section.

16 (2) The election provided in paragraph (1):

17 (A) May be based on any method selected by the qualified  
18 taxpayer that originally receives the credit.

19 (B) Shall be irrevocable for the taxable year the credit is allowed,  
20 once made.

21 (C) May be changed for any subsequent taxable year if the  
22 election to make the assignment is expressly shown on each of the  
23 returns of the qualified taxpayer and the qualified taxpayer's  
24 affiliated corporations that assign and receive the credits.

25 (D) Shall be reported to the Franchise Tax Board, in the form  
26 and manner specified by the Franchise Tax Board, along with all  
27 required information regarding the assignment of the credit,  
28 including the corporation number, the federal employer  
29 identification number, or other taxpayer identification number of  
30 the assignee, and the amount of the credit assigned.

31 (3) (A) Notwithstanding any other law, a qualified taxpayer  
32 may sell any credit allowed under this section that is attributable  
33 to an independent film, as defined in paragraph (6) of subdivision  
34 (b), to an unrelated party.

35 (B) The qualified taxpayer shall report to the Franchise Tax  
36 Board prior to the sale of the credit, in the form and manner  
37 specified by the Franchise Tax Board, all required information  
38 regarding the purchase and sale of the credit, including the social  
39 security or other taxpayer identification number of the unrelated  
40 party to whom the credit has been sold, the face amount of the

1 credit sold, and the amount of consideration received by the  
2 qualified taxpayer for the sale of the credit.

3 (4) In the case where the credit allowed under this section  
4 exceeds the “tax,” the excess credit may be carried over to reduce  
5 the “tax” in the following taxable year, and succeeding five taxable  
6 years, if necessary, until the credit has been exhausted.

7 (5) A credit shall not be sold pursuant to this subdivision to  
8 more than one taxpayer, nor may the credit be resold by the  
9 unrelated party to another taxpayer or other party.

10 (6) A party that has been assigned or acquired tax credits under  
11 this paragraph shall be subject to the requirements of this section.

12 (7) In no event may a qualified taxpayer assign or sell any tax  
13 credit to the extent the tax credit allowed by this section is claimed  
14 on any tax return of the qualified taxpayer.

15 (8) In the event that both the taxpayer originally allocated a  
16 credit under this section by the California Film Commission and  
17 a taxpayer to whom the credit has been sold both claim the same  
18 amount of credit on their tax returns, the Franchise Tax Board may  
19 disallow the credit of either taxpayer, so long as the statute of  
20 limitations upon assessment remains open.

21 (9) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
22 Division 3 of Title 2 of the Government Code does not apply to  
23 any standard, criterion, procedure, determination, rule, notice, or  
24 guideline established or issued by the Franchise Tax Board  
25 pursuant to this subdivision.

26 (10) Subdivision (i) of Section 23036 shall not apply to any  
27 credit sold pursuant to this subdivision.

28 (11) For purposes of this subdivision:

29 (A) An affiliated corporation or corporations that are assigned  
30 a credit pursuant to paragraph (1) shall be treated as a qualified  
31 taxpayer pursuant to paragraph (1) of subdivision (a).

32 (B) The unrelated party or parties that purchase a credit pursuant  
33 to paragraph (3) shall be treated as a qualified taxpayer pursuant  
34 to paragraph (1) of subdivision (a).

35 (d) No credit shall be allowed pursuant to this section unless  
36 the qualified taxpayer provides the following to the California  
37 Film Commission:

38 (1) Identification of each qualified individual.

39 (2) The specific start and end dates of production.

40 (3) The total wages paid.

1 (4) The amount of qualified wages paid to each qualified  
2 individual.

3 (5) The copyright registration number, as reflected on the  
4 certificate of registration issued under the authority of Section 410  
5 of Title 17 of the United States Code, relating to registration of  
6 claim and issuance of certificate. The registration number shall be  
7 provided on the return claiming the credit.

8 (6) The total amounts paid or incurred to purchase or lease  
9 tangible personal property used in the production of a qualified  
10 motion picture.

11 (7) Information to substantiate its qualified expenditures.

12 (8) Information required by the California Film Commission  
13 under regulations promulgated pursuant to subdivision (g)  
14 necessary to verify the amount of credit claimed.

15 (e) The California Film Commission may prescribe rules and  
16 regulations to carry out the purposes of this section including any  
17 rules and regulations necessary to establish procedures, processes,  
18 requirements, and rules identified in or required to implement this  
19 section. The regulations shall include provisions to set aside a  
20 percentage of annual credit allocations for independent films  
21 *television series, and qualified motion pictures pursuant to*  
22 *subdivision (i).*

23 (f) If the qualified taxpayer fails to provide the copyright  
24 registration number as required in paragraph (5) of subdivision  
25 (d), the credit shall be disallowed and assessed and collected under  
26 Section 19051 until the procedures are satisfied.

27 (g) For purposes of this section, the California Film Commission  
28 shall do the following:

29 (1) On or after July 1, 2009, ~~and before July 1, 2017~~, allocate  
30 tax credits to applicants.

31 (A) Establish a procedure for applicants to file with the  
32 California Film Commission a written application, on a form jointly  
33 prescribed by the California Film Commission and the Franchise  
34 Tax Board for the allocation of the tax credit. The application shall  
35 include, but not be limited to, the following information:

36 (i) The budget for the motion picture production.

37 (ii) The number of production days.

38 (iii) A financing plan for the production.

39 (iv) The diversity of the workforce employed by the applicant,  
40 including, but not limited to, the ethnic and racial makeup of the

1 individuals employed by the applicant during the production of  
2 the qualified motion picture, to the extent possible.

3 (v) All members of a combined reporting group, if known at  
4 the time of the application.

5 (vi) Financial information, if available, including, but not limited  
6 to, the most recently produced balance sheets, annual statements  
7 of profits and losses, audited or unaudited financial statements,  
8 summary budget projections or results, or the functional equivalent  
9 of these documents of a partnership or owner of a single member  
10 limited liability company that is disregarded pursuant to Section  
11 23038. The information provided pursuant to this clause shall be  
12 confidential and shall not be subject to public disclosure.

13 (vii) The names of all partners in a partnership not publicly  
14 traded or the names of all members of a limited liability company  
15 classified as a partnership not publicly traded for California income  
16 tax purposes that have a financial interest in the applicant's  
17 qualified motion picture. The information provided pursuant to  
18 this clause shall be confidential and shall not be subject to public  
19 disclosure.

20 (viii) Detailed narratives, for use only by the Legislative  
21 Analyst's Office in conducting a study of the effectiveness of this  
22 credit, that describe the extent to which the credit is expected to  
23 influence or affect filming and other business location decisions,  
24 hiring decisions, salary decisions, and any other financial matters  
25 of the applicant.

26 (ix) Any other information deemed relevant by the California  
27 Film Commission or the Franchise Tax Board.

28 (B) Establish criteria, consistent with the requirements of this  
29 section, for allocating tax credits.

30 (C) Determine and designate applicants who meet the  
31 requirements of this section.

32 (D) Process and approve, or reject, all applications on a  
33 first-come-first-served basis.

34 (E) Subject to the annual cap established as provided in  
35 subdivision (i), allocate an aggregate amount of credits under this  
36 section and Section 17053.85, and allocate any carryover of  
37 unallocated credits from prior years.

38 (2) Certify tax credits allocated to qualified taxpayers.

39 (A) Establish a verification procedure for the amount of qualified  
40 expenditures paid or incurred by the applicant, including, but not

1 limited to, updates to the information in subparagraph (A) of  
2 paragraph (1) of subdivision (g).

3 (B) Establish audit requirements that must be satisfied before  
4 a credit certificate may be issued by the California Film  
5 Commission.

6 (C) (i) Establish a procedure for a qualified taxpayer to report  
7 to the California Film Commission, prior to the issuance of a credit  
8 certificate, the following information:

9 (I) If readily available, a list of the states, provinces, or other  
10 jurisdictions in which any member of the applicant's combined  
11 reporting group in the same business unit as the qualified taxpayer  
12 that, in the preceding calendar year, has produced a qualified  
13 motion picture intended for release in the United States market.  
14 For purposes of this clause, "qualified motion picture" shall not  
15 include any episodes of a television series that were complete or  
16 in production prior to July 1, 2009.

17 (II) Whether a qualified motion picture described in subclause  
18 (I) was awarded any financial incentive by the state, province, or  
19 other jurisdiction that was predicated on the performance of  
20 primary principal photography or postproduction in that location.

21 (ii) The California Film Commission may provide that the report  
22 required by this subparagraph be filed in a single report provided  
23 on a calendar year basis for those qualified taxpayers that receive  
24 multiple credit certificates in a calendar year.

25 (D) Issue a credit certificate to a qualified taxpayer upon  
26 completion of the qualified motion picture reflecting the credit  
27 amount allocated after qualified expenditures have been verified  
28 under this section. The amount of credit shown in the credit  
29 certificate shall not exceed the amount of credit allocated to that  
30 qualified taxpayer pursuant to this section.

31 (3) Obtain, when possible, the following information from  
32 applicants that do not receive an allocation of credit:

33 (A) Whether the qualified motion picture that was the subject  
34 of the application was completed.

35 (B) If completed, in which state or foreign jurisdiction was the  
36 primary principal photography completed.

37 (C) Whether the applicant received any financial incentives  
38 from the state or foreign jurisdiction to make the qualified motion  
39 picture in that location.

(4) Provide the Legislative Analyst's Office, upon request, any or all application materials or any other materials received from, or submitted by, the applicants, in electronic format when available, including, but not limited to, information provided pursuant to clauses (i) to (ix), inclusive, of subparagraph (A) of paragraph (1).

(5) The information provided to the California Film Commission pursuant to this section shall constitute confidential tax information for purposes of Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2.

(h) (1) The California Film Commission shall annually provide the Legislative Analyst's Office, the Franchise Tax Board, and the board with a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the California Film Commission. The list shall include the names and taxpayer identification numbers, including taxpayer identification numbers of each partner or shareholder, as applicable, of the qualified taxpayer.

(2) (A) Notwithstanding paragraph (5) of subdivision (g), the California Film Commission shall annually post on its Internet Web site and make available for public release the following:

(i) A table which includes all of the following information: a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the California Film Commission, the number of production days in California the qualified taxpayer represented in its application would occur, the number of California jobs that the qualified taxpayer represented in its application would be directly created by the production, and the total amount of qualified expenditures expected to be spent by the production.

(ii) A narrative staff summary describing the production of the qualified taxpayer as well as background information regarding the qualified taxpayer contained in the qualified taxpayer's application for the credit.

(B) Nothing in this subdivision shall be construed to make the information submitted by an applicant for a tax credit under this section a public record.

(i) (1) The aggregate amount of credits that may be allocated in any fiscal year pursuant to this section and Section 17053.85 shall be an amount equal to the sum of all of the following:

1 (A) (i) One hundred million dollars (\$100,000,000) in credits  
2 for the 2009–10 fiscal year and each fiscal year thereafter, through  
3 and including the ~~2016–17~~ 2014–15 fiscal year.

4 (ii) \_\_\_\_\_ dollars (\$\_\_\_\_) in credits for the 2015–16 fiscal year  
5 and each fiscal year thereafter.

6 (B) The unused allocation credit amount, if any, for the  
7 preceding fiscal year.

8 (C) The amount of previously allocated credits not certified.

9 (2) If the amount of credits applied for in any particular fiscal  
10 year exceeds the aggregate amount of tax credits authorized to be  
11 allocated under this section, such excess shall be treated as having  
12 been applied for on the first day of the subsequent fiscal year.  
13 However, credits may not be allocated from a fiscal year other  
14 than the fiscal year in which the credit was originally applied for  
15 or the immediately succeeding fiscal year.

16 (3) Notwithstanding the foregoing, the California Film  
17 Commission shall set aside up to ten million dollars (\$10,000,000)  
18 of tax credits each fiscal year for independent films allocated in  
19 accordance with rules and regulations developed pursuant to  
20 subdivision (e).

21 (4) *For taxable years beginning on or after January 1, 2014,*  
22 *notwithstanding the foregoing, the California Film Commission*  
23 *shall set aside up to \_\_\_\_\_ dollars (\$\_\_\_\_) of tax credits each fiscal*  
24 *year for television series allocated in accordance with rules and*  
25 *regulations developed pursuant to subdivision (e).*

26 (5) (A) *For taxable years beginning on or after January 1,*  
27 *2014, notwithstanding the foregoing, the California Film*  
28 *Commission shall set aside up to \_\_\_\_\_ dollars (\$\_\_\_\_) of tax*  
29 *credits each fiscal year for a qualified motion picture allocated in*  
30 *accordance with rules and regulations developed pursuant to*  
31 *subdivision (e).*

32 (B) *For purposes of this paragraph, “qualified motion picture”*  
33 *means a motion picture that is produced for distribution to the*  
34 *general public, regardless of medium, that is either a feature with*  
35 *a minimum production budget of one million dollars (\$1,000,000)*  
36 *or an independent film and that completed its preproduction and*  
37 *principal photography outside of the state and its postproduction*  
38 *within the state.*

39 (4)

1 (6) Any act that reduces the amount that may be allocated  
2 pursuant to paragraph (1) constitutes a change in state taxes for  
3 the purpose of increasing revenues within the meaning of Section  
4 3 of Article XIII A of the California Constitution and may be passed  
5 by not less than two-thirds of all Members elected to each of the  
6 two houses of the Legislature.

7 (j) The California Film Commission shall have the authority to  
8 allocate tax credits in accordance with this section and in  
9 accordance with any regulations prescribed pursuant to subdivision  
10 (e) upon adoption.

11 SEC. 5. This act provides for a tax levy within the meaning of  
12 Article IV of the Constitution and shall go into immediate effect.